

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

MCI CONSTRUCTORS, LLC
Plaintiff,
v.
HAZEN AND SAWYER, P.C.
a New York Corporation and
CITY OF GREENSBORO, NORTH
CAROLINA,
A Municipality, organized under
The laws of North Carolina,
Defendants.

**CASE NOS. 1:99CV-00002;
1:02CV-00396**

**MCI'S MOTION TO
VACATE DAMAGES AWARD**

Petitioner MCI Constructors LLC ("MCI"), pursuant to 9 U.S.C. §§ 10 and 12, respectfully requests that the Court vacate the April 17, 2008 arbitration award (the "Damages Award") (Docket No. 503, Exhibit A), entered by the panel of arbitrators (the "Panel") in an arbitration (the "Arbitration") with Respondent, the City of Greensboro, North Carolina (the "City"). The specific grounds for vacatur are:

- (1) The arbitrators failed to apply the contract between the parties;
- (2) The Damages Award violates public policy;
- (3) The arbitrators were required to, and did not, provide a breakdown of the award and an explanation of it and otherwise failed to make a mutual, final and definite award;
- (4) There was no meeting of the minds of the parties on material issues and, therefore, no valid agreement to arbitrate; and/or
- (5) If there was an agreement, the City materially breached the Arbitration Agreement by, *inter alia*, failing to act in accordance with the implied covenant of good faith and fair dealing.

Pursuant to 9 U.S.C. § 13 (to the extent it applies), MCI refers the Court to: (a) the Arbitration Agreement, (b) the selection and appointment of the Panel, (c) time

extensions with which to render the Damages Award, (d) the “Damages Award,” and (e) the previously submitted motions to confirm and vacate the “Liability Award,”¹ and (f) all orders of the Court relating to the parties’ post-arbitration motions are attached to or referred to in MCI’s Motion to Remand the Damages Award (Docket No. 535), hereby incorporated by reference.

The grounds and authorities in support of this Motion are more fully set forth in the accompanying Memorandum and exhibits thereto, hereby incorporated by reference.

Respectfully submitted this 17th day of June, 2008.

/s/ Eric C. Rowe

C. Allen Foster (N.C. Bar No. 1499)

Eric C. Rowe (N.C. Bar No. 10713)

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¹ In addition, MCI filed a motion to remand the Damages Award. Docket No. 535.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on June 17, 2008, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Hazen & Sawyer, P.C.; The City of Greensboro, North Carolina; and National Union Fire Insurance Company of Pittsburgh, PA.

Respectfully submitted,

/s/ Eric C. Rowe

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